

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

JACOB DELANEY,

DECLARATION

Filed Under Seal

Defendant.

Scott W. Iseman, pursuant to 28 U.S.C. §1746, declares the following to be true under penalties of perjury:

1. I am a shareholder in the law firm O’Connell & Aronowitz, P.C., attorneys for the Defendant, Jacob Delaney. As such, I am fully familiar with the facts and circumstances stated herein.

2. The Defendant is charged in this Court by way of an Indictment with one count of receipt of child pornography in violation of 18 U.S.C. § 2252A(a)(2)(A) and (b)(1) and four counts of possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B). A true and accurate copy of the Indictment is attached as Exhibit “A”.

3. As described below and in the accompanying motion papers, the Defendant moves to suppress all evidence seized from the search of his apartment and all statements he made during and following the same search. I offer this Declaration in support of that Motion.

4. On December 16, 2020 the Government, with the Defendant’s consent, applied for a Protective Order over certain portions of the discoverable material in this matter.

See ECF Doc. No. 37.

5. On December 17, 2020 this Court granted the Government's request and signed the Protective Order. *See* ECF Doc. No. 38.

6. This Declaration and essentially all material in support of this motion deal with materials subject to this Protective Order. As a consequence, the Defendant submits this Declaration and all supporting motion papers under seal.

Procedural and Factual History

7. Sometime in August 2019, the Federal Bureau of Investigation received a [REDACTED] [REDACTED] from a foreign law enforcement agency ("FLA"), [REDACTED] [REDACTED]. A true and accurate copy of the [REDACTED] [REDACTED] that was disclosed to the Defendant by the Government is attached as "Exhibit "B".

8. The referral represented that on April 22, 2019 at approximately 02:41:28 UTC, IP address 69.206.190.157 was "used to access online child sexual abuse and exploitation material". *Id.*

9. On September 16, 2019 FLA advised the FBI that undefined "data" that was provided to the FBI in relation to IP addresses "associated to individuals who have accessed online Child Sexual Abuse and Exploitation material" was lawfully obtained through the use of certain authorized warrants in the FLA's home country. The FLA further represented that "At no time was any computer or device interfered with in the United States." *Id.*

10. After receiving the referral, the FBI issued a subpoena to Charter Communications to determine subscriber information for IP address 69.206.190.157 on April 22, 2019. In response to the subpoena, the FBI learned that the Defendant, Jacob

Delaney was the subscriber on said date with an apartment address of [REDACTED], [REDACTED], New Paltz, New York 12561 (“Defendant’s apartment”). A true and accurate copy of the subpoena return the Government disclosed to the Defendant is attached as Exhibit “C”.

11. On November 18, 2019, the FBI referred the investigation to the FBI’s Albany field office. A true and accurate copy of the FBI’s referral report (or “lead”) that Government disclosed to the Defendant is attached as Exhibit “D”.¹

12. On December 10, 2019, SA Fallon, FBI, applied for and obtained a “No Knock” search warrant, by way of a sworn affidavit, to search the Defendant’s apartment, all electronic devices and the Defendant. A true and accurate copy of the search warrant application disclosed to the Defendant by the Government is attached as Exhibit “E”.

13. The warrant authorizing the search was signed by Hon. Daniel J. Stewart, U.S. Magistrate Judge, Northern District of New York. A true and accurate copy of the executed warrant disclosed to the Defendant by the Government is attached as Exhibit “F”.

14. The FBI executed the warrant on Mr. Delaney’s apartment on December 12, 2019.

15. While executing the warrant, law enforcement seized numerous electronic devices belonging to the Defendant and certain other items of purportedly investigative value. A true and accurate copy of the search warrant inventory of seized items that was disclosed to the Defendant by the Government is attached as Exhibit “G”.

¹ The referral report indicates that a draft search warrant affidavit and PRTT application were included as enclosures. Those enclosures are not included in Exhibit “D” as they have not been produced to the Defendant, despite Defendant’s request.

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16. Numerous photographs of the Defendant's apartment and his property were also taken. A true and accurate copy of the Government's photolog of the same that was disclosed to the Defendant is attached as Exhibit "H".

17. During the search, the Defendant purportedly made statements to law enforcement. These statements include pre- and post-*Mirandized* statements, statements made during a polygraph examination, and a post polygraph examination interview.

18. Some of these statements were audio recorded, some were audio and video recorded, some were reduced to writing by the Defendant, and others are restated in various FBI 302 and other investigative reports. A true and accurate copy of the relevant FBI 302 report that the Government disclosed to the Defendant which identifies these various statements is attached as Exhibit "I".

19. On December 12, 2019, the same day the search warrant was executed, the Defendant was arrested and charged by way of felony complaint with possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B).

20. On December 12, 2019, the Defendant was initially arraigned and held in custody pending a detention hearing on December 13, 2019.

21. I personally appeared with the Defendant at his detention hearing. At the conclusion of the hearing, the Hon. Daniel J. Stewart released the Defendant to the supervision of U.S. Probation under terms of house arrest. *See* ECF Doc. No. 4.

22. On October 29, 2020 the Defendant was indicted by a Grand Jury in the Northern District of New York. Ex. "A".

23. On November 18, 2020 the Defendant, with the Court's consent, pursuant to FRCP 10(b), waived his right to personally appear for arraignment and pled not guilty to all counts in the Indictment. *See* ECF Doc. No. 34.

24. Based on the Notice of Motion, the Documents attached to this Declaration and the facts contained therein, and the accompanying Memorandum of Law, the Defendant moves to suppress all evidence obtained by the Government search of his apartment on December 12, 2019 and any statements obtained from the Defendant during and following the execution of the warrant.

Dated: Albany, New York
January 26, 2021

O'CONNELL & ARONOWITZ P.C.

By:



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